



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2016-0001; FRL-10021-86-Region 10]

Air Plan Approval; ID; 2010 Sulfur Dioxide NAAQS Interstate Transport Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) submission from the State of Idaho (Idaho or the State) that addresses the Clean Air Act (CAA or Act) interstate transport requirements for the 2010 1-hour Sulfur Dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). In this action, EPA is determining that Idaho will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in any other state, the Fort Hall Reservation, or the Kalispel Reservation. Therefore, EPA is approving Idaho's December 24, 2015 SIP submission as meeting the interstate transport requirements for the 2010 1-hour SO₂ NAAQS.

DATES: This action is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2016-0001. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Claudia Vaupel, (206) 553-6121, or
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SUPPLEMENTARY INFORMATION:

I. Background Information

On October 5, 2020, EPA proposed to approve Idaho's December 24, 2015 SIP submission as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO₂ NAAQS (85 FR 62679). Please refer to the October 5, 2020 notice of proposed rulemaking (NPRM) for an explanation of the CAA requirements, a detailed analysis of the submission, and EPA's proposed rationale for approval. The public comment period for this NPRM ended on November 4, 2020.

EPA notes that since the publication of the NPRM, we have determined that the Kalispel Indian Community of the Kalispel Reservation is eligible to be treated in the same manner as an affected downwind state (TAS) for purposes of CAA sections 110(a)(2)(D) and 126.¹ The Kalispel Reservation is located approximately 16 km from the Idaho border, surrounded entirely by the State of Washington. EPA's original evaluation did not specifically evaluate potential air quality impacts of sources in Idaho to the Kalispel Reservation. However, EPA's technical evaluation of Washington State would have identified sources of SO₂ near the Kalispel Reservation that meet the evaluation criteria described in the NPRM. We have specifically re-examined that information with respect to the Kalispel Reservation and affirm that consideration of the Kalispel Reservation as an affected downwind state does not impact our analysis completed at proposal, and therefore does not impact our findings with respect to the adequacy of Idaho's SIP for purposes of CAA section 110(a)(2)(D) as it relates to the 2010 SO₂ NAAQS.

II. Response to Comments

¹ On February 12, 2021, EPA determined that the Kalispel Tribe is eligible for treatment in the same manner as a state for CAA section 110(a)(2)(D) (86 FR 9334).

Comment: EPA received one adverse comment on the proposed approval. While stating that the commenter had “no objection” to the approval of Idaho’s SIP, the commenter expressed concern “about a possible variable in the equation that might be currently overlooked.” Citing footnote 8 of EPA’s proposed action, the commenter expressed concern about EPA’s analytical approach that limited the analysis to Idaho sources emitting more than 100 tons per year of SO₂. The commenter is concerned that, “while one source emitting less than 100 tpy may have little effect on neighboring states attainment of NAAQS, the aggregate effect of all those Idaho sources combined may have a very real effect and contribute significantly to its neighboring states non-attainment of NAAQS.”

The commenter acknowledged EPA’s assertion that SO₂ is expected to dissipate within 50 km of a point source. However, without citing any specific evidence of impermissible impacts from such smaller sources, the commenter posited that “it may be possible that a smaller source of SO₂ emission, if not accounted for, may be contributing to the non-attainment of a downwind state. It may also be possible that the aggregate effect of these smaller unaccounted for sources may be contributing to far more SO₂ in the air than currently known.” The commenter urged EPA to consider ways to take sources of SO₂ with releases less than 100 tpy into account in some way that “will not create undue burdens and costs”. The commenter suggests that increased monitoring at these smaller sources would reduce uncertainty in whether the sources are contributing to air quality problems in neighboring states and tribal areas, but acknowledges that extensive monitoring at small sources may not be practical. They propose EPA considering smaller sources in their notices could be sufficient enough to evaluate their air quality impacts.

Response: EPA continues to believe that the weight of evidence analysis provided in the NPRM is adequate to determine the potential downwind impact from Idaho to neighboring states. In its submission, Idaho identified the largest SO₂ emission sources in the State, explaining that because “SO₂ will most likely either disperse in the atmosphere or chemically react to form a secondary pollutant within a few miles of the source, only large pollutant sources

in proximity to the state boundary would be expected to significantly contribute to or interfere with air quality in adjacent states.” In considering sources emitting less than 100 tpy of SO₂ at proposal, EPA independently stated that “in the absence of special factors, for example the presence of a nearby larger source or unusual physical factors, Idaho sources emitting less than 100 tpy can be presumed to not be causing or contributing to SO₂ concentrations above the NAAQS.” Additionally, emissions from sources greater than 100 tpy account for 88 percent of Idaho’s statewide SO₂ emissions from point sources, and thus are appropriate to evaluate for purposes of determining whether there is any emissions activity within the State that is in violation of the good neighbor provision. EPA continues to find that this is an appropriate assessment of upwind SO₂ sources’ downwind impacts on neighboring states. EPA’s analysis includes the following factors: (1) ambient air quality data for active SO₂ monitors in Idaho or in a neighboring or downwind state within 50 km of the Idaho border, (2) emissions information for SO₂ sources in Idaho emitting greater than 100 tpy and located within 50 km of the Idaho border, (3) emissions information for SO₂ sources in neighboring or downwind states or tribal areas emitting more than 100 tpy and located within 50 km of the Idaho border, (4) available modeling and monitoring information for any area within 50 km of the Idaho border, and (5) SO₂ emissions trends in Idaho and neighboring and downwind states and tribal areas.

EPA notes that the commenter did not provide a technical analysis or any additional specific information indicating that sources emitting 100 tpy or less (or an aggregation of sources emitting less than 100 tpy) may have downwind impacts that violate the good neighbor provision. For these reasons, EPA finds that our analysis of the Idaho sources in the NPRM, considered alongside other weight of evidence factors described in that document, support EPA’s conclusion that Idaho has satisfied CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO₂ NAAQS.

III. Final Action

EPA is approving Idaho's December 24, 2015 submission as meeting CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2010 SO₂ NAAQS.

IV. Statutory and Executive Orders Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735; October 4, 1993) and 13563 (76 FR 3821; January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255; August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885; April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355; May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629; February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and it will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249; November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: April 6, 2021.

Michelle L. Pirzadeh,
Acting Regional Administrator,
Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart N—Idaho

2. In § 52.670, the table in paragraph (e) is amended by adding an entry at the end of the table for “Interstate Transport Requirements for the 2010 Sulfur Dioxide NAAQS” to read as follows:

§ 52.670 Identification of plan.

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(e) * * *

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* * * * *				
Interstate Transport Requirements for the 2010 Sulfur Dioxide NAAQS	State-wide	12/24/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	This action addresses CAA 110(a)(2)(D)(i)(I).